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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 20th February, 1953

S.R.O. 360.—WHEREAS the election of the persons named in the Schedule to the Commission's Notification No. 19/225/52-Elec. III, dated the 29th July, 1952, as members of the Legislative Council of the State of Bihar, by the members of the Legislative Assembly of Bihar has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Kalika Prasad Singh, resident of village Mohligarh, P.O. and P.S. Jamui, District Monghyr (Bihar);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, PATNA

PRESENT:

Shri Basu Prasad, Retired District Judge, *Chairman.*

Shri Hargobind Prasad Sinha, Retired District Judge, *Member.*

Shri Aditya Narain Lal, Advocate, *Member.*

ELECTION PETITION NO. 225 OF 1952

In the matter of election to the State Legislative Council of Bihar by the members of the Bihar Legislative Assembly.

Shri Kalika Prasad Singh, resident of village Mohligarh, P.O. and P.S. Jamui, District Monghyr (Bihar)—*Petitioner.*

Versus

1. Abdul Hayat Chand, resident of village Rahi, P.O. Bikram (Patna).
2. Amin Ahmad, resident of Braj Kishore Path, Patna.
3. Ignace Beck, resident of Pathal Kudua, Ranchi.
4. Hannah Bodra, Nayatoli, Ranchi, P.O. Ranchi.
5. Ambika Prasad Chaudhury, resident of village and P.O. Bareta (Purnea).
6. Ramanand Chaudhury, resident of mohalla Balbhadrapur, P.O. Laheria-sarai (Darbhanga).

7. Gouri Shanker Dalmia, resident of Jasidh Bazar, P.S. and P.O. Jasidh (E. I. Rly.) (Santhal Parganas).
8. Rampyari Devi, resident of Congressnagar, Patna-3.
9. Saraswati Devi, resident of Hazaribagh.
10. Habibul Haque, resident of mohalla Chauhatta (Khanjanchi Road), P.O. Bankipore, Patna.
11. Bariar Hembrom, resident of village Saraidaha, P.O. Mohulpahari, P. S. Shikaripara (Santhal Parganas).
12. Jason Koomar Hembrom, village Harinkole. P.O. Jaljhari (Santhal Parganas).
13. Meneck Homi, resident of village Mango, Jamshedpore Notified Area, P.O. Sakchi, Division 10.
14. Sitaram Jagatramka, P.O. Dhalbhumgarh, (Singhbhum).
15. Jitulal, mohalla Chaughara, P.O. Patna City (Patna).
16. Nayama Khatoon Haidar, Ward No. 22, P.O. Patna City, at present residing 16-Gardner Road Chambers, Patna.
17. Nurulla Saheb, resident of Khankah, P.O. Monghyr.
18. Jagrup Oraon, Karge, P.O. Mandar (Ranchi).
19. Radha Gobind Prasad, resident of Hazaribagh.
20. Sachidanand Roy, resident of Konka Road, P.O. Ranchi,
21. Punyadeva Sharma, 'Patna Administration Committee, Ward Village, P.O. Phulwari,
22. Shah Ozair Munemin, resident of Phulwari Sharif (Patna).
23. Indra Narayan Singh, resident of village Nowdiha, P.O. Kharagdiha (Hazaribagh).
24. Kuseshwar Singh, resident of village Tumaul, P.O. Haripur, P. S. Biraul (Darbhanga).
25. Raghubans Prasad Singh, village Muradpore, P.O. Afyodhyaganj Bazar, P. S. Barari (Purnea).
26. Ram Shekhar Prasad Singh C/o The Sarvodaya Ashrama, Chapra (Saran).
27. Shree Krishna Singh, resident of Ward 7A, Mohalla Balbhadaropore, P.O. & P. S. Laheriasarai, (Darbhanga).
28. Kamta Prasad Sinha (Kam), resident of village Bhawanipore P.O. Deo (Gaya).
29. Shyama Prasad Sinha, Chairman, Bihar Legislative Council, Patna.
30. Sushila Sinha, Brajkishore Path, Patna.
31. Udaya Raj Sinha alias Shivji, P.O. Surajpura, Shahabad.
32. Brajendra Narain Yadava, village Hajipore, P.O. & P.S. Khagaria (Monghyr).
33. Sitaram Yadava, village Chakmahila, P.O. Sitamarhi, (Muzaffarpore).
34. Abdul Malik, resident of Bihiganj, P.O. Dinapur Cantt. District Patna.
35. Harendra Bahadur Chandra Congress Maidan Road, Patna.
36. Balmukund Das Guru, Ward No. 3, Hazaribagh Municipality, P.O. Hazaribagh.
37. Raj Brijraj Krishna, Anand Bagh, Patna City.
38. Brajmohan Prasad Singh, village Bangrahatta, P.O. Bangrahatta, P. S. Singha, District Darbhanga.
39. Ramcharan Singh, village Shekhopore, P.O. Cari, District Darbhanga.
40. Thakur Ram Kumar Singh, House No. 29 village Padma, P.O. Padma. District Hazaribagh,
41. Suraj Narayan Sinha, village and P.O. Jamhor, District Gaya.
42. Syed Imam Ali, resident of mohalla Guzri, Patna City—*Respondents.*

Shri Kalika Prasad Singh was a candidate for election to the Legislative Council of Bihar by the members of the Bihar Legislative Assembly and he presented his nomination paper (Ex 3) on 14th March, 1952. On the date of scrutiny of nomination papers Mr. Nanda Lal Sinha, the Returning Officer, rejected the nomination of the petitioner on the ground "The candidate is a sitting member of the Bihar Legislative Assembly". The nomination papers of 42 persons, who are respondents in this case, were accepted as valid. Out of the, 9 persons withdrew their

candidature, and the remaining 33 candidates contested for 24 seats (*vide Ex. 2*). As a result of the polling, respondents Nos. 1, 2, 5, 6, 7, 8, 10, 11, 14, 15, 16, 17, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32 and 33 were declared elected on 31st March 1952 (*vide Ex. 4*).

The petitioner states that he was duly qualified for being elected to the Bihar Legislative Council and did not suffer from any disqualification whatsoever. He contends that his nomination was improperly rejected and such rejection has materially affected the result of the election. He, further, states that, under the same circumstances as those in which his nomination was rejected, the nomination papers of respondents Nos. 2, 3, 7, 11 and 12 were accepted as valid by the Returning Officer. It is, therefore, contended that there was either improper rejection of one nomination or improper acceptance of five nominations, and in either case the entire election is wholly void.

Five sets of written statements have been filed in this case, (i) by respondent No. 39, (ii) by respondent No. 14, (iii) by respondent No. 2, (iv) by respondent No. 19, and (v) by respondents Nos. 8, 15, 28, 33 and 35.

Respondent No. 39 contends that he subsequently withdrew his candidature and so he is not a necessary party.

The second, fourth and fifth sets of respondents mainly contend that there was bar under the Constitution to the petitioner's election as a member of the Council and that his nomination was not improperly rejected. They also contend that there was no improper acceptance of any nomination paper. Respondent No. 19, further, contends that the result of the election has not been materially affected by the rejection of the petitioner's nomination. He also alleges that the petitioner was disqualified for being chosen as a member of the Legislative Council as he did not duly submit the return of election expenses in time.

Respondent No. 2 (Mr. Amin Ahmad) had also opposed the election petition by raising similar defence in his written statement, but at the time of hearing he entirely agreed with the petitioner's contentions and argued that the election was wholly void.

The following issues arise for decision:

Issues

1. Was the petitioner disqualified for being elected as a member of the Bihar Legislative Council?
2. Was the nomination of the petitioner improperly rejected? If so, has the result of the election been materially affected by such rejection?
3. Were the nominations of respondents Nos. 2, 3, 7, 11 and 12 improperly accepted? If so, has the result of the election been materially affected by such acceptance?
4. Is the election of the members of the Legislative Council of Bihar by the members of the Bihar Legislative Assembly wholly void?

Findings

Issues Nos. 1 and 2—These are the important issues in this case and they may be conveniently discussed together.

The contesting respondents plead bar under the Constitution of India to the election of the petitioner to the Bihar Legislative Council. Respondent No. 19 pleads further disqualification of the petitioner under the Representation of the People Act, 1951. Let us first examine the contention regarding the alleged bar under the Constitution.

Article 171 of the Constitution of India, which is under Chapter III, dealing with the State Legislature, describes the composition of the Legislative Council. Clause (3) of the Article provides the quotas of members to be elected by different bodies and the quota to be nominated by the Governor. Sub-clause (d) of clause (3) runs as follows "As nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly". In this case, we are concerned with the election by the members of the Bihar Legislative Assembly under Sub-clause (d) referred to above.

It is contended by the respondents that, in view of the bar under Article 171(3) (d) of the Constitution, the petitioner could not be elected in as much as he was

a sitting member of the Bihar Legislative Assembly, then existing and functioning. The petitioner, on the other hand, contends that the prohibition applied to members of the Assembly constituted under the Constitution of India, and not to members of the Assembly constituted under the Government of India Act, 1935, which was then functioning temporarily. It may be noted that the petitioner was not a member of the Assembly constituted under the Constitution of India. Ex. 1 is the list of members of the Bihar Legislative Assembly all of whom, except one, were elected at the last general election held in January 1952; this list was maintained under Section 152 of the Representation of the People Act, 1951 for the purposes of election of the body of members described in Article 171(3) (d) of the Constitution. Section 18(1) (b) of the Representation of the People Act, 1951, makes it clear that it is the members of the Legislative Assembly, first constituted under the Constitution, who are to elect members for the Legislative Council. For the sake of brevity, let us call it "New Assembly". It appears that some time elapsed between the constitution of the new Assembly and the first meeting of that Assembly. During that interval, the Assembly functioning immediately before the commencement of the Constitution of India was empowered to perform the duties of the Legislative Assembly; this was a temporary provision provided by Article 382 of the Constitution. For the sake of brevity, let us call it "Old Assembly". The old Assembly was constituted under the Government of India Act, 1935.

From what has been stated above it is clear that it is the members of the new Assembly who are to elect under Article 171 (3) (d) of the Constitution. The second part of the Sub-clause prohibiting election of certain persons, namely, "who are not members of the Assembly", also refers to the members of the new Assembly, and not to the members of the old Assembly. In other words, the word "Assembly" occurring in the two parts of the sub-clause means the same body. This is clarified by the provisions of Section 10(1) (b) of the Representation of the People Act, 1950 which provides that the seats are to be filled by persons elected by the members of the Legislative Assembly of the State from amongst persons who are not members of that Assembly. The word "that" is significant and it, unmistakably, refers to the Assembly described in the earlier part of the Section. There cannot, therefore, be any doubt that the prohibition applied to the members of the new Assembly, and not to the members of the old Assembly, then functioning temporarily.

This matter is, further, clarified by the provisions of the Constitution (Removal of Difficulties) Order, No. II, dated the 26th January, 1950, as amended by the Constitution (Removal of Difficulties) Order No. II (Amendment) Order, dated the 10th April, 1950. In Part II of the Schedule to the Constitution (Removal of Difficulties) Order No. II, a new article 172A has been inserted which provides, *inter alia*, that the provisions of articles 169 to 172 shall not apply in relation to the House or Houses of the Legislature of any State functioning under article 382. It will, thus, appear that the provisions of article 171 (3) (d) shall not apply in relation to the Legislative Assembly functioning under article 382, namely, the old Assembly. This clearly implies that the members of the old Assembly cannot elect, but there can be no bar to their being elected.

The object of creating such bar appears to be that one person cannot, simultaneously, be member of two Houses of Legislature. This is clearly forbidden by Article 190 of the Constitution.

From the above discussions it is manifestly clear that there was no bar under the Constitution to the election of the petitioner to the Legislative Council and we find accordingly.

Respondent No. 19 (Mr. Radha Gobind Prasad) has pleaded a further disqualification under Section 7(c) of the Representation of the People Act, 1951. It appears that the petitioner had been also nominated as a candidate for election to the Bihar Legislative Assembly from Lachhimpore-cum-Jamui Constituency; that the result of that election, wherein another candidate was successful, was published in the Gazette dated 11th February 1952; that the petitioner filed return of election expenses before the Returning Officer on 22nd March 1952, i.e., within the prescribed period; that disqualification was imposed on the petitioner by the Election Commission by a Notification dated 15th July 1952 for the reason that there was certain defect in the return, and that the disqualification was subsequently removed by the Election Commission by a notification dated 8th October 1952 (vide Exts. 8, 9, 10, 11 and 12).

Section 8(1) (b) of the Representation of the People Act, 1951 lays down that a disqualification under clause (c) of section 7 shall not take effect until the expiration of two months from the date by which the return of election expenses ought to have been lodged. In this case, the last date for filing the return was 27th March 1952 and so the disqualification took effect from 27th May 1952. This disqualification lasted for a short period only and was removed on 8th October 1952.

Now, the petitioner presented his nomination paper for election to the Legislative Council on 14th March 1952 and the scrutiny of the nomination paper was held on 15th March 1952. On those dates, no disqualification attached to the petitioner.

In view of the above findings, we hold that the nomination of the petitioner was improperly rejected.

The next question for consideration is, whether the result of the election has been materially affected by such rejection. In case of improper rejection of a nomination, it has been uniformly held that there is a very strong presumption that the result of the election has been materially affected because the electors are deprived of the right to vote for a candidate who is qualified to stand for election. It is sufficient to refer to the cases reported in Indian Election Cases by Sen and Poddar, page 122 and Doabia's Election Cases, Vol. I, page 80. In the present case, the presumption applies with a greater force for the election was held in accordance with the system of proportional representation by means of the single transferable vote. The presumption has not been rebutted in this case. We, therefore, find that the result of the election has been materially affected by improper rejection of the petitioner's nomination.

Issue No. 3.—Respondents Nos. 2, 3, 7, 11 and 12 were not members of the Legislative Assembly formed under the Constitution and so acceptance of their nomination papers was not improper.

Issue No. 4.—In view of the provision of Section 100 (1) (c) of the Representation of the People Act, 1951, we find that the election in question is wholly void.

The result, therefore, is that the election petition succeeds.

ORDER

The election petition is allowed. The election of all the 24 persons elected by the members of the Bihar Legislative Assembly for filling the 24 seats in the Bihar Legislative Council is declared void.

As this election petition has arisen on account of an error of judgment on the part of the Returning Officer, we order that parties in this case do bear their respective costs.

(Sd.) BASU PRASAD, *Chairman.*

(Sd.) HARGOBIND PRASAD SINHA, *Member.*

(Sd.) ADITYA NARAIN LAL, *Member.*

PATNA;

Dated the 17th February, 1953

[No. 19/225/52-Elec. III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

